

EXHIBIT 52

Picard v. Merkin

Victor Teicher 10-29-13

10:27:49

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:

BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Debtor.

Adv. Pro. No.

08-01789 (BRL)

IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC,

Plaintiff, Adv. Pro. No.
09-1182 (BRL)

v.

J. EZRA MERKIN, GABRIEL CAPITAL, L.P., ARIEL FUND LTD., ASCOT PARTNERS, L.P., GABRIEL CAPITAL CORPORATION,

Defendants.

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VIDEOTAPED DEPOSITION of VICTOR TEICHER, as reported by NANCY MAHONEY, Certified Court Reporter, RPR, CLR and Notary Public of the States of New York and New Jersey, at the offices of BAKER HOSTETLER, 45 Rockefeller Plaza, New York, New York on Tuesday, October 29, 2013, commencing at 10:50 a.m.

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11:44:26 1 way or another.

11:44:26 2 Q. Do you recall in your prior testimony
11:44:29 3 that you discussed conversations with Mr. Merkin
11:44:31 4 regarding the consistency of Mr. Madoff's returns?

11:44:33 5 A. Yes.

11:44:34 6 Q. Do you recall you testified that you
11:44:37 7 believe Mr. Madoff's returns were consistent?

11:44:39 8 A. Yes, were excessively consistent.

11:44:41 9 Q. And what did you mean by that?

11:44:43 10 A. Well, basically that if you looked at
11:44:47 11 the returns and you looked at the standard deviation
11:44:49 12 of the returns, it was -- resulted in a very high
11:44:54 13 Sharpe ratio. I mean, we might -- I don't recall
11:44:57 14 speaking with Ezra about the -- the Sharpe ratio of
11:45:00 15 those returns, but there was very, very little
11:45:03 16 volatility to those returns and -- from one year to
11:45:08 17 the next. And my recollection is it wasn't much
11:45:12 18 volatility from one month to the next.

11:45:20 19 Q. In discussing this with -- with
11:45:24 20 Mr. Merkin, the consistency of Mr. Madoff's returns,
11:45:27 21 did you consider that -- his returns to be
11:45:29 22 materially different from the consistency of your
11:45:32 23 own returns?

11:45:32 24 MS. PEERCE: Objection to form.

11:45:33 25 MR. STEINER: Object to the form.

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11:45:38 1 A. I considered them to be materially
11:45:40 2 different from the consistency of anyone's returns.

11:45:42 3 Q. How so?

11:45:47 4 A. How so?

11:45:48 5 Q. Yes.

11:45:50 6 A. Well, no one -- I don't know of
11:45:56 7 anyone who has returns that are -- pretty much don't
11:46:01 8 vary from one month to -- to another; and
11:46:04 9 particularly year over year, the returns are fairly
11:46:08 10 consistent one year to the next.

11:46:18 11 Q. In discussing the consistency of
11:46:33 12 Mr. Madoff's returns, you just mentioned a term
11:46:35 13 "Sharpe ratio." What is that?

11:46:37 14 A. That is the -- the return divided by
11:46:42 15 the standard deviation of the return.

11:46:48 16 Q. Do you recall any discussions with
11:46:50 17 Mr. Merkin regarding the Sharpe ratio?

11:46:53 18 A. No, I don't think he and I discussed
11:46:55 19 that.

11:46:56 20 Q. In general, not specifically in
11:46:58 21 regards to Mr. Madoff's returns?

11:46:59 22 A. No, I don't think so.

11:47:01 23 MS. PEERCE: Object to the form.

11:47:17 24 Q. Do you recall considering the Sharpe
11:47:22 25 ratio when you had those discussions with

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02:06:02 1 conversations did you have?

02:06:03 2 A. I -- I recall we had a conversa --
02:06:04 3 had several conversations about it and -- we had
02:06:11 4 several conversations about it. I mean, what --
02:06:13 5 what's the sum and substance? I thought it was a --
02:06:18 6 that the -- that the Madoff track record didn't
02:06:25 7 sound right, didn't smell right.

02:06:27 8 Q. So you remember that conversation in
02:06:29 9 which --

02:06:30 10 A. I don't remember the specific
02:06:31 11 conversation. I remember the -- conceptually the
02:06:34 12 conversation.

02:06:34 13 Q. Do you remember where those
02:06:35 14 conversations took place?

02:06:40 15 A. My recollection is in the office.
02:06:44 16 Q. Do you recall if anyone else was
02:06:46 17 present for any of those conversations, other than
02:06:49 18 yourself and Mr. Merkin?

02:06:52 19 A. Perhaps Mike Autera was there,
02:06:55 20 perhaps not.

02:06:55 21 Q. Is it possible that Jack Mayer was
02:06:57 22 also there?

02:06:58 23 A. Possible.

02:06:59 24 Q. He was in the same office, correct?

02:07:01 25 A. Yes, the same premises, yes.

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02:18:13 1 another, but he was sufficiently reliable.

02:18:15 2 Q. Did you find him to be honest?

02:18:18 3 A. Impeccably.

02:18:29 4 Q. Do you recall any discussions between
02:18:30 5 yourself and Mr. Merkin at which Mr. Mayer was
02:18:33 6 present in which you discussed the possibility that
02:18:35 7 Mr. Madoff could be a fraud?

02:18:40 8 A. I don't have any specific
02:18:42 9 recollection of a conversation like that, but it
02:18:46 10 wouldn't surprise me if a conversation like that
02:18:48 11 happened.

02:18:50 12 Q. Would you give the same answer if I
02:18:53 13 asked about a conversation in which it was discussed
02:18:55 14 whether or not Mr. Madoff could be running a Ponzi
02:18:58 15 scheme?

02:18:59 16 A. I don't recall that the issue of
02:19:02 17 Ponzi scheme ever came up.

02:19:04 18 Q. But the possibility of fraud may have
02:19:06 19 come up?

02:19:17 20 A. Yeah, the possibility that it wasn't
02:19:19 21 what it seemed to be.

02:19:20 22 Q. Are you -- are you aware that within
02:19:21 23 this action, Mr. Mayer has provided testimony saying
02:19:25 24 that he was present at a conversation in which you
02:19:28 25 told Mr. Merkin that Madoff and BLMIS could be a

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03:19:35 1 pulled from the docket from the Supreme Court of the
03:19:39 2 State of New York for this particular case. We're
03:19:43 3 not sure that there's any differences between this
03:19:46 4 and the version that was produced to us by the Ariel
03:19:49 5 and Gabriel receiver, but if there is, we thought it
03:19:51 6 best to introduce both of these.

03:19:55 7 MR. KITCHEN: So I'll mark -- I'll
03:19:55 8 mark that with the next deposition exhibit.

9 THE REPORTER: 173.

03:20:10 10 MR. KITCHEN: 173.

03:20:12 11 (Deposition Trustee Exhibit 173
03:20:19 12 marked for identification.)

03:20:19 13 BY MR. KITCHEN:

03:20:20 14 Q. Ask you to look at that and,
03:20:21 15 realizing you can't read every word of it right now,
03:20:24 16 answer whether or not it appears to be the testimony
03:20:27 17 you provided in 2009?

03:20:29 18 A. Yes, it does.

03:20:32 19 MR. KITCHEN: With that, then I have
03:20:35 20 no further questions.

03:20:36 21 MR. MENNITT: We will reserve our
03:20:38 22 questions.

03:20:43 23 THE VIDEOGRAPHER: Off the record,
03:20:44 24 3:22.

25 (Deposition concluded.)